

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Application of USCOC of Greater North Carolina, ) WT Docket No. 16-154  
LLC, and Horry Telephone Cooperative, Inc. )  
 )  
For Consent To Assign License )

MEMORANDUM OPINION AND ORDER

Adopted: November 22, 2016

Released: November 22, 2016

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of USCC and Horry for Commission consent to the assignment to USCC of a partitioned Lower 700 MHz A Block license covering all or parts of three local market areas in North Carolina. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.<sup>1</sup> In the proposed transaction, USCC would increase its spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in all or parts of two of the three local market areas at issue. After carefully evaluating the likely competitive effects of USCC’s increased aggregation of below-1-GHz spectrum in these two local market areas, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our competitive review, we find that the proposed assignment of license would serve the public interest, convenience, and necessity, and therefore we consent to the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* USCOC of Greater North Carolina, LLC, is an indirect wholly-owned subsidiary of United States Cellular Corporation (together with USCOC of Greater North Carolina, LLC, USCC), which is headquartered in Chicago, Illinois, and provides wireless telecommunications services to approximately 4.9 million customers in 23 states.<sup>2</sup> Horry Telephone

<sup>1</sup> *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015).

<sup>2</sup> United States Cellular Corp., SEC Form 10-K, at 1 (filed Feb. 24, 2016), <http://www.sec.gov/Archives/edgar/data/821130/000082113016000050/usmform10k.htm>. USCC is a majority-owned (84%) subsidiary of Telephone and Data Systems, Inc. *Id.*; Application of USCOC of Greater North Carolina, LLC, and Horry Telephone Cooperative, Inc., for Consent To Assign License, ULS File No. 0007186439 (filed Mar. 21, 2016) (Application), Exhibit 1—Description of Transaction at 1 (Public Interest Statement).

Cooperative, Inc. (Horry, and together with USCC, the Applicants), is a telecommunications cooperative that serves the rural counties of Horry and Georgetown in northeast South Carolina.<sup>3</sup>

3. *Description of the Transaction.* On March 21, 2016, USCC and Horry filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),<sup>4</sup> seeking Commission consent to the assignment of a partitioned Lower 700 MHz A Block license from Horry to USCC.<sup>5</sup> Through the instant transaction, USCC would be assigned 12 megahertz of low-band spectrum from Horry in four counties covering all or parts of three Cellular Market Areas (CMAs): CMA 218 (Wilmington, NC), CMA 575 (North Carolina 11 – Hoke), and CMA 576 (North Carolina 12 – Sampson).<sup>6</sup> Post-transaction, USCC would hold from 59 megahertz to 67 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz holdings from 37 megahertz to 49 megahertz in parts of two of these three CMAs.<sup>7</sup>

4. *Standard of Review.* Pursuant to Section 310(d) of the Act,<sup>8</sup> we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and authorizations would serve the public interest, convenience, and necessity.<sup>9</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,<sup>10</sup> other applicable statutes, and the Commission's rules.<sup>11</sup> If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially

<sup>3</sup> Response of Horry to the General Information Request Dated July 6, 2016, at 2 (July 20, 2016) (Horry Information Request Response); HTC, About HTC, <http://htcinc.net/about-htc/> (last visited Oct. 28, 2016).

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> Public Interest Statement.

<sup>6</sup> *USCOC of Greater North Carolina, LLC, and Horry Telephone Cooperative, Inc., Seek FCC Consent to the Assignment of a Partitioned Lower 700 MHz A Block License in North Carolina*, Public Notice, 31 FCC Rcd 7308 (WTB 2016) (*Accepted for Filing Public Notice*); see also Application, Attachment A—Spectrum Aggregation.

<sup>7</sup> *Accepted for Filing Public Notice* at 1-2; Application, Attachment A—Spectrum Aggregation. As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

<sup>8</sup> 47 U.S.C. § 310(d).

<sup>9</sup> See, e.g., *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3634, para. 6 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5111, para. 8 (2015) (*AT&T-Plateau Wireless Order*); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB, IB 2014) (*AT&T-Leap Order*).

<sup>10</sup> Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6 & n.15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8 & n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13 & n.45.

<sup>11</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>12</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>13</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.<sup>14</sup>

5. The Commission has fully discussed the contours of the required public interest determination in several orders,<sup>15</sup> which we follow here. In general, the competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>16</sup> The Commission and the Department of Justice each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.<sup>17</sup> The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.<sup>18</sup> If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.<sup>19</sup>

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.<sup>20</sup> We note that no issues were raised with respect to the basic qualifications of Horry or USCC, and in addition, USCC previously and repeatedly has been found qualified to hold Commission licenses.<sup>21</sup> We therefore find there is no reason

<sup>12</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>13</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>14</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>15</sup> See, e.g., *Applications of AT&T and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139-41, paras. 18-22 (2015); *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to The Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10442-44, paras. 23-27 (2013) (*Alaska Wireless Order*).

<sup>16</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

<sup>17</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

<sup>18</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

<sup>19</sup> 47 U.S.C. § 309(e); see also, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743, para. 15; *Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002).

<sup>20</sup> 47 U.S.C. § 310(d); 47 CFR § 1.948; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112, para. 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

<sup>21</sup> See, e.g., *Application of United States Cellular Corporation and Hershey Cooperative Telephone Company for Consent To Assign License*, WT Docket No. 16-14, Memorandum Opinion and Order, DA 16-1064, para. 7 (WTB Sept. 16, 2016); *Application of USCOC of Central Illinois, LLC, and Adams Telcom, Inc. for Consent To Assign Licenses*, Memorandum Opinion and Order, 31 FCC Rcd 3404, 3406, para. 6 (WTB 2016) (*USCC-Adams Order*); *Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License*, Memorandum Opinion and Order, 30 FCC Rcd 9899, 9902, para. 8 (WTB 2015) (*USCC-McBride Order*).

to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Horry or USCC.<sup>22</sup>

### III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.<sup>23</sup> In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.<sup>24</sup> In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review,<sup>25</sup> and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.<sup>26</sup> The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”<sup>27</sup> The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.<sup>28</sup>

8. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,<sup>29</sup> and that the leading two nationwide service providers hold most of the low-band spectrum available today.<sup>30</sup> The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.<sup>31</sup> As the Commission found, without access to this low-band spectrum, rival

<sup>22</sup> 47 U.S.C. § 310(d); 47 CFR § 1.948.

<sup>23</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

<sup>24</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

<sup>25</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231.

<sup>26</sup> *Id.* at 6240, paras. 286-88; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108, para. 13.

<sup>27</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. *Id.* at 6240, para. 287; see also, e.g., *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51 (2015) (*AT&T-Club 42 Order*); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, 5113, 5114, 5123, 5130, paras. 8 & n.31, 13, 15, 36 & n.114, 56.

<sup>28</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

<sup>29</sup> *Id.* at 6164, para. 60.

<sup>30</sup> *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

<sup>31</sup> *Id.* at 6164, para. 60.

service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.<sup>32</sup> We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.<sup>33</sup>

#### A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,<sup>34</sup> including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

10. *Product and Geographic Market.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).<sup>35</sup> In addition, we find that the relevant geographic market is local.<sup>36</sup> The Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers four counties in all or parts of three local markets, accounting for well under one percent of the population of the United States.

11. *Input Market for Spectrum and Market Participants.* The Commission has determined in prior orders that the following bands, or portions thereof, should be included in the input market: cellular, broadband PCS, SMR, 700 MHz, AWS-1 and BRS on a market-by-market basis, WCS, the 600 MHz band (at the conclusion of the Incentive Auction), AWS-4, H Block, the majority of the EBS spectrum, and the AWS-3 band (on a market-by-market basis as it becomes "available").<sup>37</sup> The *Sprint-Shentel-NTELOS Order* found that the AWS-3 1695-1710 MHz band satisfies the standard adopted by the Commission in the *Mobile Spectrum Holdings Report and Order* and "should now be considered available, as well as suitable, on a nationwide basis."<sup>38</sup> Therefore, the total amount of spectrum suitable and available for the provision of mobile telephony/broadband services is now 595.5 megahertz, approximately one-third of which is 199 megahertz.<sup>39</sup> We consider facilities-based entities providing

<sup>32</sup> *Id.* at 6164-65, paras. 60-61; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14.

<sup>33</sup> *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13073, para. 37; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6154, 6164-65, 6168, paras. 41, 61, 68-69.

<sup>34</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 22.

<sup>35</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23.

<sup>36</sup> The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27.

<sup>37</sup> *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13064-65, para. 21; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

<sup>38</sup> *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-38, para. 15.

<sup>39</sup> *Id.*



mobile telephony/broadband services using these spectrum bands as just described to be market participants.<sup>40</sup>

### B. Competitive Effects of the Proposed Transaction

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.<sup>41</sup> The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.<sup>42</sup> The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.<sup>43</sup> In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.<sup>44</sup>

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. No market triggers the revised total spectrum screen,<sup>45</sup> but in our review of the below-1-GHz spectrum holdings, we find that USCC would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in three counties in two of these three local markets post-transaction.<sup>46</sup> We therefore look more closely at the potential competitive effects that these proposed low-band spectrum holdings may have.<sup>47</sup>

<sup>40</sup> See, e.g., *id.* at 3638, para. 16; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751, para. 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions, but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23 & n.78; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37. Further, as AWS-3 (1755-1780 MHz and 2155-2180 MHz on a market-by-market basis) and 600 MHz spectrum become available, we will also consider facilities-based entities providing mobile telephony/broadband services using that spectrum to be market participants. *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16.

<sup>41</sup> See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-88. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240, paras. 46, 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065, para. 23 & n.82; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123, paras. 31, 35.

<sup>42</sup> See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

<sup>43</sup> See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

<sup>44</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

<sup>45</sup> See *supra* para. 11; see also *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-39, paras. 15, 17 & n.52.

<sup>46</sup> See *supra* para. 8; see also *AT&T-Club 42 Order*, 30 FCC Rcd at 13066, para. 24; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19, para. 25.

<sup>47</sup> USCC would also acquire 12 megahertz of low-band spectrum in Pender County in CMA 576 (North Carolina 12 – Sampson). USCC would hold 37 megahertz of below-1-GHz spectrum post-transaction in Pender County, and we do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review.

14. *Record.* The Applicants contend that the proposed transaction does not present spectrum aggregation concerns.<sup>48</sup> Further, the Applicants maintain that USCC is a “mid-sized” service provider in an industry “dominated” by nationwide service providers,<sup>49</sup> and that the additional spectrum would allow USCC to provide an LTE experience comparable to its larger rivals.<sup>50</sup> No petitions to deny or comments were received.

15. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the combined entity’s post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.<sup>51</sup>

16. We begin our analysis with our review of Wilmington, NC, which is a non-rural market of approximately 310,000 people and a population density of 298 people per square mile.<sup>52</sup> In this market, five service providers each have a significant market share: AT&T, Sprint, T-Mobile, USCC, and Verizon Wireless each hold approximately [REDACTED] percent of the market, respectively. Post-transaction, USCC would hold 59 megahertz of spectrum in this CMA, including 49 megahertz of spectrum below 1 GHz. Total spectrum holdings for the four nationwide service providers range from 45 megahertz to 168 megahertz of spectrum, while the respective below-1-GHz spectrum holdings for AT&T, Sprint, and Verizon Wireless are 18 megahertz, 14 megahertz, and 47 megahertz, respectively.<sup>53</sup> In terms of population and land area coverage, five service providers—USCC, AT&T, Sprint, T-Mobile, and Verizon Wireless each have significant 3G and LTE coverage.<sup>54</sup>

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<sup>48</sup> Public Interest Statement at 2.

<sup>49</sup> *Id.* at 3.

<sup>50</sup> Response of USCC to the General Information Request Dated July 6, 2016, at 2-4 (July 20, 2016) (USCC Information Request Response). Moreover, in its information request response, Horry asserts that other entities were actively solicited with respect to this business opportunity. Horry Information Request Response at 2-3 (describing the efforts of an investment bank, which contacted a group of six potential buyers for the spectrum at issue).

<sup>51</sup> We derive market shares and HHIs from our analysis of data compiled in our December 2015 NRUF and LNP database, network coverage from January 2016 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3641, para. 21 & n.66; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

<sup>52</sup> The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by 100 people or less per square mile. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (2004).

<sup>53</sup> In addition, we note that DISH holds 6 megahertz of unpaired low-band spectrum and 65 megahertz of spectrum above 1 GHz.

<sup>54</sup> It previously has been found that coverage of 70% or more of the population and 50% or more of the land area presumptively is sufficient for a service provider to have a competitive presence in the market. See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906, para. 18 & n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, para. 31 & n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770, para. 81 & n.279.

In Wilmington, NC, AT&T, T-Mobile, USCC, and Verizon Wireless cover at least approximately 99% of the population and 93% of the land area with 3G, while Sprint covers approximately 89% of the population and 56% of the land area with 3G. In terms of their respective LTE coverage, AT&T, T-Mobile, USCC, and Verizon Wireless

17. We find, notwithstanding the fact that USCC would hold post-transaction more than one-third of the below-1-GHz spectrum in Wilmington, NC, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.<sup>55</sup> In addition to USCC, Verizon Wireless (the leading service provider), AT&T, Sprint, and T-Mobile all have significant market shares in this market. Further, the four nationwide service providers each have significant 3G and LTE population and land area coverage. Further, aside from USCC, AT&T, Sprint, and Verizon Wireless have access to low-band spectrum that would allow at least a 5×5 LTE deployment, as well as access to above-1-GHz spectrum to combine with their low-band spectrum holdings. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.<sup>56</sup> We find that USCC's acquisition of this low-band spectrum would be unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs. The proposed transaction, therefore, is unlikely to materially lessen the ability of rival service providers to respond effectively to any anticompetitive behavior on the part of USCC in Wilmington, NC.

18. We next turn to our review of North Carolina 11 – Hoke, which is a rural market of approximately 274,000 people, with a population density of 87 people per square mile. Post-transaction, USCC would hold 49 megahertz of low-band spectrum in Columbus County, which accounts for approximately 21 percent of the population of this CMA. Four service providers have significant market shares: AT&T, T-Mobile, USCC, and Verizon Wireless each hold approximately [REDACTED] percent of the market, respectively. In addition, Sprint has some market presence, accounting for approximately [REDACTED] percent of the market. Post-transaction, USCC would hold 37 megahertz to 59 megahertz of spectrum in total, including 37 megahertz to 49 megahertz of below-1-GHz spectrum across the CMA. Total spectrum holdings for AT&T, Sprint, T-Mobile, and Verizon Wireless range from 62 megahertz to 159 megahertz of spectrum, while their respective below-1-GHz spectrum holdings are 18 megahertz, 14 megahertz, 12 megahertz, and 47 megahertz.<sup>57</sup> In terms of population and land area coverage, four service providers—USCC, AT&T, T-Mobile, and Verizon Wireless—have significant 3G and LTE coverage.<sup>58</sup>

19. We find, notwithstanding the fact that USCC would hold post-transaction more than one-third of the below-1-GHz spectrum in Columbus County in the rural market of North Carolina 11 – Hoke, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.<sup>59</sup> In addition to USCC, three nationwide service providers, Verizon Wireless (the leading service provider), AT&T, and T-Mobile have significant market shares, and Sprint has some market presence. Further, in addition to USCC's significant 3G and LTE network, AT&T, T-Mobile, and Verizon Wireless have significant 3G and LTE population and land area coverage in this rural market. Also, Sprint has significant LTE population coverage, and covers well over 40 percent of the land area with LTE. Further, all four nationwide service providers have access to low-band spectrum that would

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cover at least approximately 98% of the population and 89% of the land area with LTE, while Sprint covers approximately 93% of the population and 66% of the land area with LTE.

<sup>55</sup> See *supra* para. 15. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-07, paras. 19, 21; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.

<sup>56</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207, para. 180.

<sup>57</sup> In addition, DISH holds 6 megahertz of unpaired low-band spectrum and 65 megahertz of spectrum above 1 GHz.

<sup>58</sup> In North Carolina 11 – Hoke, AT&T, T-Mobile, USCC, and Verizon Wireless cover at least approximately 96% of the population and 91% of the land area with 3G. Sprint does not have significant 3G coverage, it covers approximately 67% of the population and 40% of the land area. In terms of their respective LTE coverage, these same four service providers cover at least approximately 91% of the population, and 86% of the land area, while Sprint covers approximately 72% of the population and 44% of the land area.

<sup>59</sup> See *supra* para. 15; see also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-07, paras. 19, 21; 30 FCC Rcd at 8563, para. 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.



allow at least a 5×5 LTE deployment throughout this market, as well as access to above-1-GHz spectrum to combine with their low-band spectrum holdings. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.<sup>60</sup> We find that USCC's acquisition of this spectrum would be unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs. The proposed transaction, therefore, is unlikely to materially lessen the ability of rival service providers to respond effectively to any anticompetitive behavior on the part of USCC in North Carolina 11 – Hoke.

#### IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>61</sup> Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.<sup>62</sup> The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.<sup>63</sup> Second, each claimed benefit must be verifiable.<sup>64</sup> Third, we calculate the magnitude of benefits net of the cost of achieving them and benefits must flow through to consumers, and not inure solely to the benefit of the company.<sup>65</sup> The Commission applies a “sliding scale approach” to evaluating benefit claims: Under this approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>66</sup> Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.<sup>67</sup>

21. *Potential Benefits.* The Applicants assert, in their detailed demonstration of the claimed benefits, that the proposed transaction would provide USCC with additional below-1-GHz spectrum that would enable it to offer innovative wireless services in the subject markets and allow USCC to improve and enhance its voice and data service offerings to the public.<sup>68</sup> According to the Applicants, USCC currently deploys LTE on a 5×5 megahertz channel, while the larger wireless providers generally have deployed 10×10 megahertz LTE channels,<sup>69</sup> which, USCC asserts, permit approximately twice the throughput speeds and capacity of a 5×5 megahertz LTE deployment.<sup>70</sup> The Applicants contend that the

<sup>60</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207, para. 180.

<sup>61</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 39; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43.

<sup>62</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 86; see also *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131.

<sup>63</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>64</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>65</sup> For example, we will more likely find marginal cost reductions to be cognizable than reductions in fixed cost because reductions in marginal cost are more likely to result in lower prices for consumers. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>66</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40.

<sup>67</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40; see also *AT&T-Leap Order*, 29 FCC Rcd at 2794, para. 131.

<sup>68</sup> Public Interest Statement at 1-3.

<sup>69</sup> *Id.* at 2.

<sup>70</sup> USCC Information Request Response at 3-4; see also USCC Information Request Response, Attachments C, D.

assigned spectrum would permit USCC to deploy a 10×10 channel with throughput speeds comparable to those of the larger service providers, which would allow USCC to provide competitive LTE service.<sup>71</sup> USCC maintains that additional spectrum would allow it to provide an LTE experience comparable to its rivals and thus bolster its competitive position in one of its important strategic markets.<sup>72</sup>

22. *Evaluation.* We have reviewed the Applicants' asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential benefits of USCC acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed transaction likely would result in some public interest benefits post-transaction in these markets. Specifically, we anticipate that USCC, through the acquisition of this Lower 700 MHz spectrum, would be able to deploy a more competitive LTE network. We further find that by adding this low-band spectrum, USCC potentially would be able to serve these markets with consistently greater throughput.<sup>73</sup> Moreover, we believe that non-nationwide providers are important sources of competition, especially in rural areas where multiple nationwide service providers may have less incentive to offer high quality services.<sup>74</sup> We believe that non-nationwide service providers enhance competitive choices for consumers in the mobile wireless marketplace and help promote deployment in rural areas.<sup>75</sup> Thus, as a result of the proposed transaction, customers likely are to benefit from access to improved throughput performance and a more robust network, resulting in a better customer experience.<sup>76</sup>

## V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. After carefully evaluating the likely competitive effects of USCC's increased aggregation of below-1-GHz spectrum in Wilmington, NC and North Carolina 11 – Hoke, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of USCC is unlikely to be materially lessened. Further, we find that the record provides general support for the Applicants' claims that the proposed transaction would likely result in some public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh any potential public interest harms. As a result, based on the record before us and our competitive review, we find that consent to the proposed assignment would serve the public interest, convenience, and necessity.

## VI. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for the assignment of one partitioned license held by Horry Telephone Cooperative, Inc., to USCOC of Greater North Carolina, LLC, is GRANTED.

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<sup>71</sup> Public Interest Statement at 2-3; *see also* USCC Information Request Response at 2-4; USCC Information Request Response, Attachment C.

<sup>72</sup> USCC Information Request Response at 2-7.

<sup>73</sup> *See, e.g., USCC-Adams Order*, 31 FCC Rcd 3404, 3413, para. 22; *USCC-McBride Order*, 30 FCC Rcd at 9908-09, para. 24.

<sup>74</sup> *Cf. Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, para. 179.

<sup>75</sup> *Cf. id.* at 6207, para. 180.

<sup>76</sup> *See, e.g., USCC-Adams Order*, 31 FCC Rcd at 3413, para. 22, *USCC-McBride Order*, 30 FCC Rcd at 9908-09, para. 24; *see also, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53..

25. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

26. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins  
Chief  
Wireless Telecommunications Bureau